Staff Report

Agenda Item: **INTERGOVERNMENTAL AGREEMENT FOR WATER SHARING BETWEEN THE TOWN OF CLARKDALE AND THE CITY OF COTTONWOOD** – Discussion and consideration to approve the Intergovernmental Agreement for Water Sharing between the Town of Clarkdale and the City of Cottonwood with an effective date of February 1, 2010.

Meeting Date: January 26, 2010

Prepared By: Wayne Debrosky, Utilities Director

Background: In 2006 the Town of Clarkdale and the City of Cottonwood purchased Cottonwood Waterworks water system from a private water provider. A goal set by both municipalities at the time of purchase was to separate the existing private water system into two municipal water systems along municipal boundaries. One of the final steps in this process was to meter the inter-municipal connection at Old Jerome Highway and Black Hills Drive. This meter was installed on November 24, 2009 and both municipalities have been monitoring the exchange of water between the two systems since that time. A Water Sharing IGA between the Town of Clarkdale and the City of Cottonwood is the next step in this process and this agreement will define the conditions of exchange and set a rate per one-thousand gallons to be applied to the water exchanges between the two municipalities.

Recommendation: To approve the Intergovernmental Agreement for Water Sharing between the Town of Clarkdale and the City of Cottonwood with an effective date of February 1, 2010.

INTERGOVERNMENTAL AGREEMENT FOR MUNICIPAL WATER SHARING

THIS AGREEMENT, made and entered into this 1st day of February 2010, by and between the CITY OF COTTONWOOD, a municipal corporation of the State of Arizona, hereinafter called "Cottonwood", and the TOWN OF CLARKDALE, a municipal corporation of the State of Arizona, hereinafter called "Clarkdale".

WHEREAS, Cottonwood and Clarkdale have each been duly authorized by their electors to own and operate a municipal water utility; and

WHEREAS, on January 25, 2006, Cottonwood and Clarkdale cooperatively acquired the business assets of the private water utility known as Cottonwood Water Works, Inc., ("CWW"); and

WHEREAS, prior to the acquisition of CWW by Clarkdale and Cottonwood, CWW had historically been operated as a single, unified water distribution system that crosses the Clarkdale-Cottonwood municipal boundary in several places; and

WHEREAS, because of the interconnected nature of the CWW system, the amount of water that flowed into Cottonwood from wells located in Clarkdale, and the amount of water that flowed into Clarkdale from wells located in Cottonwood could not be accurately measured until valving and metering could be installed at specific interconnection points; and

WHEREAS, Clarkdale and Cottonwood previously found it necessary and desirable to provide for the temporary free exchange of water resources between them through an Intergovernmental Agreement, until such time as water use between the parties could be accurately measured; and

WHEREAS, Clarkdale and Cottonwood agree that maintaining system connectivity, and establishing rates and procedures for water sharing between the two communities provides a substantial benefit to public health and safety; and

WHEREAS, pursuant to A.R.S. 11-952, Cottonwood and Clarkdale are authorized to enter into this agreement;

NOW THEREFORE, in exchange for the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Agreement hereby warrant, covenant and agree as follows:

1. Effective February 1, 2010 a bulk water rate is hereby established between Clarkdale and Cottonwood at a rate of one dollar and fifty cents ($1.50) per thousand gallons of water.

2. Metering of bulk water will occur at three points on the system, as identified in Exhibit A, "Bulk Water Metering Locations".

3. All three meters shall be accessible to both Cottonwood and Clarkdale. Cottonwood and Clarkdale shall each read all three of the meters a minimum of once per month. Monthly

billings will be generated based on the meter readings on the 1st day of each month. The amount of water transferred between Cottonwood and Clarkdale will be calculated and a bill will be generated based on whichever of the parties transferred the higher amount of water. The lower amount transferred will be subtracted from the higher amount and the difference will be billed to that party transferring the lesser amount. The billing will be sent electronically by the 5th of each month and is due by the 30th of each month. A 0.833% late fee shall be charged for any charges not paid in full by the 30th of any month and each month thereafter.

4. Meters A, B and C shall be installed by Cottonwood on Cottonwood property and shall be the property of Cottonwood.

   Meter A, the Inter-Municipal Meter, measures water flowing back and forth between the communities. Meter A along with the necessary appurtenances shall be installed and maintained by Cottonwood and the cost of said installation shall be paid equally by both parties. The total cost for the inter-municipal meter, vault and appurtenances was fourteen thousand one hundred eighty-nine dollars and seventy-four cents ($14,189.74) and the Clarkdale share of this cost is seven thousand ninety-four dollars and eighty-seven cents ($7,094.87). Upon failure of meter A, it will be repaired or replaced and the expense shall be paid equally by both parties. Meters B and C are residential bulk meters which monitor flows from the Clarkdale system to customers on the Cottonwood system. Meters B and C shall be maintained by Cottonwood, and, upon failure of either of these meters, will be replaced at the expense of Cottonwood. Upon Cottonwood providing water from its own system to the areas served by meters B and C, the meters will remain in place for emergency use only.

5. A monthly usage report shall be generated and shall be made available to both parties.

6. The meters referenced in Section 3; specifically Meter A, Black Hills Drive and Old Jerome Highway, Meter B upper Cottonwood Ranch, Black Hills Drive, and Meter C Pine Shadows, Highway 89A, shall be tested for accuracy every three (3) years or sooner if requested in writing by either party. The cost of this testing shall be paid equally by both parties.

7. Required Water Quality reporting to State and other regulatory agencies shall remain the responsibility of each individual party for each party's own water system. All required water source reporting shall be made available to both parties. In the case of a water quality violation the responsible party shall notify the other party of said violation and the procedures taken for correction.

8. Water supplied to either party through this agreement shall be metered and automatically supplied through equipment at the inter-municipal connection. Notification shall be made immediately to and by each party when unusually high demand is to be placed on the water system of either party. Said notification shall by written notice by fax

transmission to the other party. The purpose of this procedure is to ensure that either party's water supply, infrastructure, and operational equipment is not compromised by the other party's demand, causing undue hardship to either party. Request for the transfer of quantities of water in volumes which would impact the supplying systems ability to provide service in accordance with the appropriate regulations may be denied or postponed by either party until necessary precautions can be taken to ensure safe inter-municipal delivery of water.

9. Security/Access to System and Facilities procedures shall be adhered to by both parties. The parties agree that maintaining the safety and security of the municipal water utilities is of the highest priority, and the parties shall fully cooperate with each other toward that end. To this end, only authorized representatives of the Cottonwood and Clarkdale Municipal Water Utilities shall have access to the water facilities identified in this agreement.

10. Effective Date/Term of Agreement –This Agreement's initial term shall begin on February 1, 2010 and terminate on June 30, 2010. In the event written notice is not given by either party to this agreement to the other 90 days prior to the termination date as hereinabove provided, this agreement shall automatically be extended on the same terms and conditions herein provided, all for an additional period of one year. Said agreement shall continue thereafter for additional one-year periods unless either party hereto gives at least 90 days written notice in advance of the then applicable expiration date, to the other party that the party does not wish to extend this agreement for an additional one-year term.

11. Termination For Cause – In the event of any default by either party to this Agreement, the non-defaulting party shall give to the defaulting party written notice specifying the default. If the defaulting party does not, within thirty (30) days after notice has been given, cure the default or begin action to cure the default, and thereafter diligently prosecutes such action to completion, then the non-defaulting party may terminate this Agreement by delivering to the defaulting party written notice of such termination.

12. All notices or demands upon any party to this Agreement (except the notice provided for in Paragraph 8 herein) shall be in writing and shall be delivered in person and by United States certified mail, addressed as follows:

To Clarkdale:	To Cottonwood:
Town Clerk Town of Clarkdale 39 N. 9th Street P.O. Box 308 Clarkdale, AZ 86324	City Clerk City of Cottonwood 827 North Main Street Cottonwood, AZ 86326

With a Copy to:

Town Manager
Town of Clarkdale
39 N. 9th Street
P.O. Box 308
Clarkdale, AZ 86324

With a Copy to:

City Manager
City of Cottonwood
827 North Main Street
Cottonwood, AZ 86326

13. Cottonwood will indemnify and hold Clarkdale harmless from any and all claims for damages made by third parties arising from or related to the provisions relating to this agreement and will indemnify Clarkdale against any damages that may be paid or ordered to be paid to third parties, together with cost of defense, including reasonable attorney's fees. Those claims arising solely out of the errors or omissions of Clarkdale are exempted from the provisions of this paragraph.

14. Clarkdale will indemnify and hold Cottonwood harmless from any and all claims for damages made by third parties arising from or related to the provisions relating to this agreement and will indemnify Cottonwood against any damages that may be paid or ordered to be paid to third parties, together with cost of defense, including reasonable attorney's fees. Those claims arising solely out of the errors or omissions of Cottonwood are exempted from the provisions of this paragraph.

15. If a dispute arises out of or relates to this Agreement, or breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to settle the dispute through mediation before resorting to arbitration, litigation or some other dispute resolution procedure. In the event that the parties cannot agree upon the selection of a mediator within ten (10) days, either party may request the Presiding Judge of the Superior Court of Yavapai County to assign a mediator from a list of real estate experienced mediators maintained by the Arizona Municipal Risk Retention Pool.

16. All books, accounts, reports, files and other records relating to this Agreement shall be subject to inspection and audit by either party to this agreement for five years after completion of the Agreement as provided in ARS 35-214.

17. The parties agree to comply with Executive Order 99-4 concerning equal opportunity.

18. This Agreement shall be filed with the Yavapai County Recorder as provided in ARS 11-952.

19. This Agreement may be cancelled pursuant to the provisions of ARS 38-511.

20. In accordance with ARS 11-952(D), this agreement has been submitted to each party's legal counsel, who have determined that the parties are authorized to enter into this Agreement and that the Agreement is in proper form.

21. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and it may be amended or modified only by an instrument in writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized officials on the aforementioned date.

TOWN OF CLARKDALE	**CITY OF COTTONWOOD**
_____	_____
Doug Von Gausig, Mayor	Diane Joens, Mayor
ATTEST:	ATTEST:
_____	_____
Kathy Bainbridge, Town Clerk	Marianne Jiménez, City Clerk

TOWN OF CLARKDALE
ATTORNEY APPROVAL FORM

Pursuant to ARS 11-951 through 11-954 the undersigned has reviewed the attach Intergovernmental Agreement between the Town of Clarkdale and the City of Cottonwood and find the Agreement to be in proper form and within the powers and authority granted to the Town of Clarkdale under the laws of the State of Arizona and the Town Code.

Dated this _____ day of _____, 2010

_____
Robert S. Pecharich
Boyle, Pecharich, Cline, Wittington & Stallings, P.L.L.C.
Clarkdale Town Attorney

CITY OF COTTONWOOD
ATTORNEY APPROVAL FORM

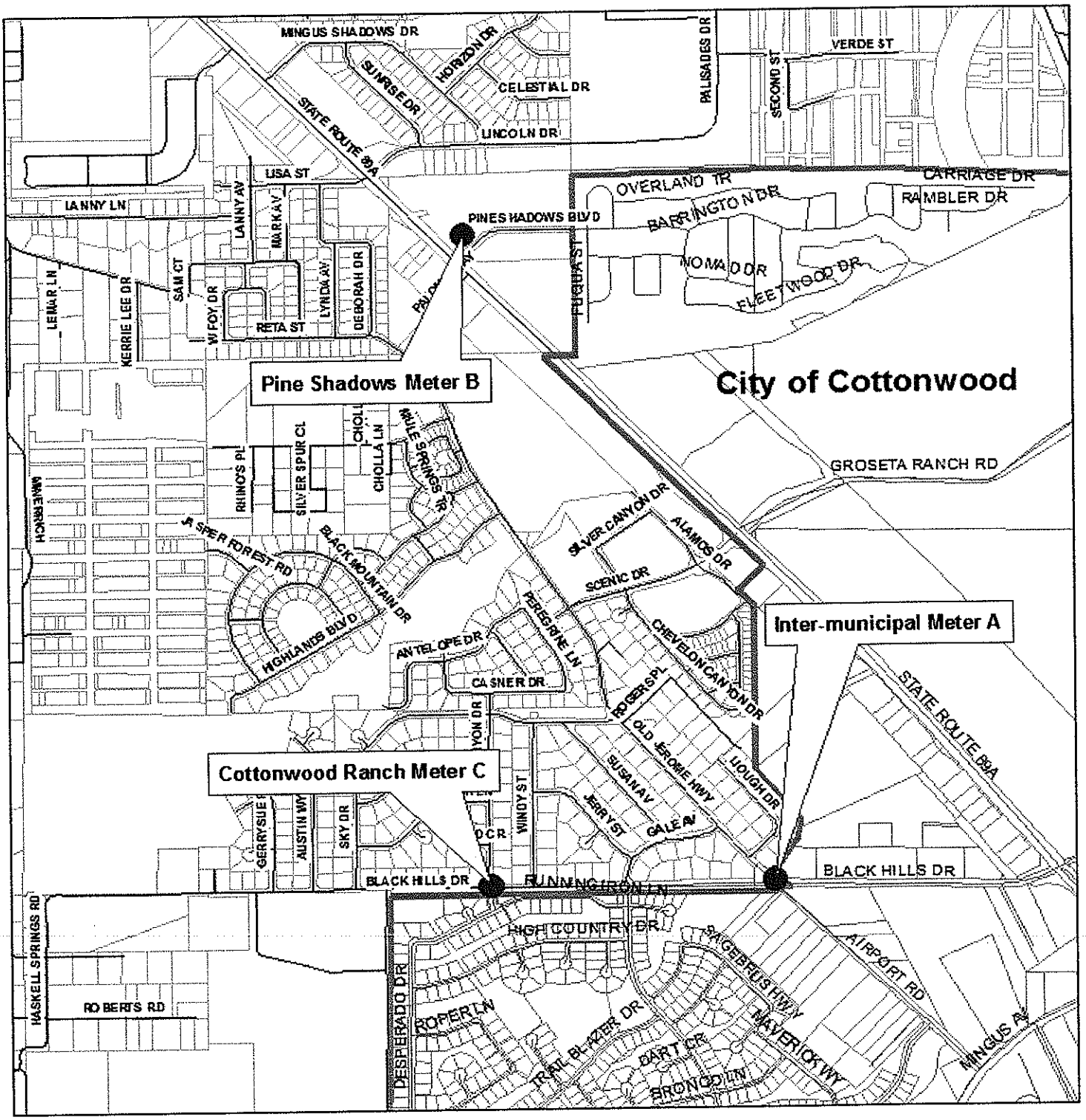
Pursuant to ARS 11-951 through 11-954 the undersigned has reviewed the attach Intergovernmental Agreement between the City of Cottonwood and the Town of Clarkdale and find the Agreement to be in proper form and within the powers and authority granted to the City of Cottonwood under the laws of the State of Arizona and the City Code.

Dated this _____ day of _____, 2010

_____
Steve Horton, Cottonwood City Attorney

The Town of Clarkdale
P.O.Box 308/15 N Ninth Street,
Clarkdale,AZ 86324

Exhibit A
Bulk Water Metering Locations



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September 28, 2009

Bulk Water Metering Locations

Cottonwood Streets
Cottonwood_Parcels
Clarkdale Streets
Clarkdale_Boundary
Clarkdale Parcel

Inter-Municipal Water Meter and Vault Costs

Ferguson Waterworks- Magmeter	$3643.09
Border Marketing- Solar Panel & electronics	$4761.50
Alliance- Solar Installation	$2226.87
Yavapai Fence-Site Enclosure	$1499.00
United Rentals-Equip. Rental	$ 621.90
Cottonwood Util. Dept. Labor.	$1437.28
Vault-4 X 4 X 4'	$ N/C *
Total	$14,189.74

*The vault used was left over from a previous City of Cottonwood project and is not being included in this cost recap.